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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,572	05/03/2001	Cary Lee Bates	ROC920010079US1	6826
7590	11/16/2005		EXAMINER	
Gero G. McClellan Thomason, Moser & Patterson, L.L.P. 3040 Post Oak Boulevard, Suite 1500 Houston, TX 77056-6582			LANEAU, RONALD	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/848,572	BATES ET AL.
	Examiner	Art Unit
	Ronald Laneau	3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8, 10, 12-21, 25-29 and 42-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8, 10, 12-21, 25-29 and 42-46 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3627

1. In view of the Appeal Brief filed on September 1, 2005, PROSECUTION IS HEREBY REOPENED. A new ground of rejection under 35 U.S.C. § 103 is set forth below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 10, 12-21, 25-29 and 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tedesco et al (US 6,085,888) in view of Kim et al (US 6,330,490 B1).

Tedesco discloses a method of operating a reservation control system for reserving items dispensed by a vending machine networked to a reservation control system comprising the steps of: receiving a reservation request from a vending machine computer for an item (see col. 7, lines 1-13, fig. 2); determining whether the item is available at a vending machine (see col. 6, lines 6-26); and reserving the item by placing a hold on it (see col. 8, lines 3-17 and col. 9, lines 34-50). Tedesco et al further teach the steps of transmitting a message indicating that the reservation request has been accepted and the item is reserved for future pickup, along with a message containing a confirmation number (see Fig. 3B). Tedesco et al further teach the step of updating the removing a reservation request upon determining that the item has been purchased from the vending machine (see Fig. 9). Tedesco et al further teach the use of item identifiers (see Fig. 5).

Tedesco does not disclose reserving the item to ensure availability of the item in satisfaction of the reservation request and the step of calculating a service charge, where the

Art Unit: 3627

charge increases as the length of time of the reservation increases but Kim discloses a vending machine wherein a customer makes a reservation using the listing and reserving apparatus and that in turn will ensure the availability of the item when needed by the customer (col. 6, lines 27-60). Kim further discloses calculating a service charge for the item according to a length of time for which the item was reserved (col. 4, lines 5-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize ensure the availability of an item or a product as taught by Kim into the system of Tedesco because it would allow a buyer to ensure that a customer gets to pick up a reserved item even if there is a change in the availability of said item.

Tedesco et al do not teach data structures, however, Kim discloses the use of data structures in the disclosed system and it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ data structures as taught by Kim into the system of Tedesco because it would provide an efficient means for storing data and also indicate the number of items that are available to a user.

Response to Arguments

4. Applicant's arguments filed 09/01/05 have been fully considered but they are not persuasive.

Applicant further argues that Tedesco does not teach reserving an item in a vending machine. In response to Applicant's arguments, Kim is used to disclose such limitations. Furthermore, Applicant argues that Tedesco does not disclose "calculating a service charge on the basis of how long an item is reserved prior to pick up." Again in response to Applicant's

Art Unit: 3627

arguments, Kim is cited to disclose said limitations. Applicant argues that the examiner fails to make a *prima facie* case of obviousness since there is no suggestion or motivation to modify the references or combine reference teachings so as to arrive at the claimed invention. In response to applicant's arguments, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on Mon-Fri from 8:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3627

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ronald Laneau

Ronald Laneau
Examiner
Art Unit 3627

11/14/05

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